

POLICE/SHERIFF'S DEPARTMENT	GENERAL ORDER
SUBJECT: Search Incident to Arrest	NUMBER: 2-5
EFFECTIVE DATE: July 1, 1999	REVIEW DATE:
AMENDS/SUPERSEDES: GO 2-5, June 1988	APPROVED: _____ Chief of Police/Sheriff
CALEA STANDARDS: 1.2.3-.4, 61.1.2	VLEPSC STANDARDS: ADM.02.02-.04, OPR.03.05, OPR.07.01, OPR.08.03

NOTE

This order is for internal use only, and does not enlarge an officer's civil or criminal liability in any way. It should not be construed as the creation of a higher standard of safety or care in an evidentiary sense, with respect to third-party claims. Violations of this directive, if proven, can only form the basis of a complaint by this department, and then only in a non-judicial administrative setting.

INDEX WORDS

Body-cavity searches
Force; use of during a search
Search incident to arrest
Search procedures
Searches; of vehicles
Strip searches
Vehicles; searches of

I. POLICY

Officers who develop reasonable suspicion that a crime has been committed may make investigative stops of citizens, and under probable cause may make arrests or conduct searches. The department encourages investigations and expects officers to search competently and knowledgeably whenever the occasion requires. The Virginia General Assembly has declared its preference for search warrants under *Virginia Code* § 19.2-59 and has cautioned officers of the need to adhere to constitutional guidelines. Consistent with the policies of General Orders 2-1 through 2-4, officers shall not conduct general exploratory searches but shall adhere strictly to constitutional law. Officers are reminded that when a search is made incidental to an arrest, the search must be based on the arrest and not the arrest on the search. The officer's authority to search without a warrant comes automatically from a lawful arrest.

II. PURPOSE

To establish guidelines for the search of person(s) who are placed under arrest and taken into custody.

III. DEFINITIONS

A. Strip search

A search of a person requiring the removal or rearrangement of some or all clothing to permit the visual inspection of any or all skin surfaces and the undergarments. A strip search shall only be conducted at the jail or lock-up and shall be witnessed only by officers or jail personnel of the same sex.

B. Body-cavity search

A search involving not only visual inspection of skin surfaces but the internal physical examination of body cavities and, in some instances, organs such as the stomach cavity. A body-cavity search shall only be performed by a medically-qualified member of the same sex under sanitary conditions. A body-cavity search may take place at a jail or lock-up if these criteria are satisfied.

IV. PROCEDURE

A. General

The general rule is that a reasonable search may follow a valid arrest. The officer has the authority to make a search which may extend to articles carried by the suspect and to the suspect's immediate surroundings. Although an arrestee who is handcuffed at the time of search cannot reasonably reach into the area being searched, the search of the area is still legally justified.

B. Time and place of search incident to an arrest

1. A search incident to an arrest must occur in such a way that it and the arrest are part of a continuous, uninterrupted transaction. Two conditions are necessary for this to occur:

- a. The search must be made as soon as practical after the arrest.
- b. The search must be made at or near the place of the arrest.

C. When a search before an arrest is valid

A search incident to an arrest is mandatory following the arrest. An officer cannot search a person without probable cause and then arrest the person if something incriminating turns up.

A search before an arrest is valid only if

1. probable cause for the arrest existed before the search began, **and**
2. the search and arrest occur almost at the same time.

D. Use of force

An officer conducting a search incident to an arrest is permitted to use whatever degree of force is reasonable and necessary at the time of the arrest. If the officer used an unreasonable amount of force under the existing circumstances, the search is unlawful.

1. Officers are reminded that the use of deadly force merely to prevent the escape of a fleeing felon constitutes an unreasonable seizure under the Fourth Amendment. The same logic applies to any application of excessive force during a search. (See GO 2-6 for a definition of excessive force.)

[Note: Some agencies require that suspects be handcuffed before they are searched. If so, place the appropriate guidance here. Officer safety precautions should appear where appropriate throughout all orders in this manual concerning arrests, searches, and seizures.]

E. Scope of search

An officer making a search incident to an arrest may search only the following permissible places:

1. The entirety of the person being arrested.
2. The area within the immediate control of the person being arrested into which the suspect might reach for a weapon or for evidence. The purpose of this search must be to:
 - a. Protect the officer.
 - b. Prevent escape.
 - c. Prevent the destruction of evidence.
3. Accessories carried by the suspect may be searched incident to a full custodial arrest for they are within the area in which the defendant might

reach to grab a weapon or an item of evidence. See GO 2-1 for an additional discussion of searches and seizures. ***[Consult your commonwealth's attorney to determine whether locked containers may be searched incident to an arrest.]***

- a. Pagers seized incident to an arrest may be checked for voice or alphanumeric codes. Activation of the pager's memory shall be contemporaneous with the arrest.
4. Vehicles may be searched contemporaneous with the arrest of the occupant or driver. The search shall be conducted as soon as practicable following the arrest.
 - a. A contemporaneous search of the entire passenger compartment may be undertaken incident to the arrest of the occupant or driver, even if the driver or occupant is not in the vehicle at the time of the search.
 - b. A search undertaken pursuant to "a" includes any container found within the passenger compartment. A container is any object capable of holding another object, and includes open or closed glove compartments, luggage, boxes, and bags.
 - c. The trunk of the vehicle shall not be searched incident to an arrest **unless** readily accessible to the suspect. The search of the trunk can only be undertaken pursuant to the conditions outlined in GO 2-1 (including a search by consent).

F. Strip searches

Strip and body-cavity searches are governed by § 19.2-59.1.

1. Strip searches shall **not** be conducted of persons arrested for traffic violations, Class 3 or 4 misdemeanors, or violations of city, county, or town ordinances which are punishable by less than 30 days in jail, unless the officer has an articulable, reasonable suspicion to believe that the person is concealing a weapon. Reasonable suspicion may be based on, but is not limited to, the following criteria.
 - a. Nature of the offense.
 - b. Arrestee's demeanor and appearance.
 - c. Circumstances of the arrest or evidence of a major offense in plain view or during the course of the arrest.

- d. Arrestee's criminal record, particularly a history of narcotics offenses or violence.
 - e. Detection of suspicious objects beneath the suspect's clothing during a search incident to an arrest.
- 2. Strip searches shall be performed by persons of the same sex as the person arrested and at the jail or lock-up where the search cannot be observed by persons not physically conducting the search. In any event, the on-duty supervisor must expressly authorize the strip search.
 - a. A strip search in the field shall only be conducted under exigent circumstances where the life of the officer or others is at risk and the on-duty supervisor has expressly authorized it.
 - b. When authorized, the strip search shall be performed in a room designed for the purpose, by the least number of same-sex personnel present as necessary, in conformance with approved hygienic practices, and under circumstances that provide privacy from all but those authorized to conduct the search.

G. Body-cavity searches

- 1. Body-cavity searches other than the mouth shall be conducted only when there is probable cause to believe a particular prisoner may be concealing contraband within a body cavity or otherwise on the suspect's person. Body-cavity searches shall only be conducted under the express direction of the chief/sheriff.
- 2. If appropriate, upon authority of the chief/sheriff, the officer shall seek a search warrant and shall prepare the necessary affidavit. Body cavity searches shall be conducted without a warrant only in extreme emergencies to protect the lives of prisoners or to prevent serious breaches of security.
- 3. The body-cavity search shall be performed only by a licensed physician or other medically-trained person as directed by the physician.
- 4. The process of conducting the body-cavity search shall involve the same safeguards for privacy and hygiene as for strip searches.
- 5. Body-cavity search procedures.
 - a. The officer shall inform the prisoner of his or her intention to conduct a body-cavity search thus giving the prisoner the opportunity to voluntarily surrender the suspected contraband.

- b. The prisoner shall remove every article of clothing including wigs and dentures and shall give them to the officer for inspection.
- c. Should the prisoner resist the cavity search and become violent, additional officers of the same sex as the prisoner shall restrain the prisoner and assist in stripping. Only sufficient force, necessary under the circumstances, shall be applied to complete the search.
- d. Should a prisoner resist a cavity search and an insufficient number of same-sex officers are available to restrain the prisoner, the following procedures shall be followed:
 - (1) Officers of the opposite sex may assist in subduing the prisoner before the prisoner is stripped.
 - (2) Officers shall subdue the prisoner and apply the necessary restraints (handcuffs, shackles, etc.), then leave the room.

H. What may be seized

- 1. During a search incident to an arrest, an officer may seize any of the following things:
 - a. Anything in the permissible area that is evidence of the offense for which the officer has probable cause to make the arrest.
 - b. Anything in the permissible area that is evidence of any other offense.
 - c. Anything else which is outside the permissible area that is evidence of the offense for which the officer makes the arrest or of any other offense if the evidence is in plain view of the spot where that officer makes the arrest.

- I. Searches incident to an arrest are not illegal. The attorney general (Virginia) has decided that searches incident to lawful arrests are not prohibited by § 19.2-59 which provides that no law-enforcement officer shall conduct a search unless in possession of a search warrant issued by the proper officer.

V. SEARCHES OF PRISONERS - PROCEDURES

The department advocates the following method of searching arrested persons:

A. Wall search

1. *[Note: In the interest of officer safety, your agency may require officers to handcuff prisoners before searching them.]*
2. When feasible, have another officer present before conducting the search, to act as a cover.
3. Place the suspect with hands high on a wall or other vertical surfaces, the hands extended approximately three feet apart.
4. Do not allow the suspect to place palms flat on the wall: have the suspect extend the fingers.
5. The feet should be positioned one of two ways. The first method is to separate the feet wide apart; the other is to make the suspect cross his or her legs. The suspect's legs should be far enough away from the wall so that the suspect would not have significant balance to push away from the wall with any force.
6. The suspect's back should be in a straight line with the legs and not be arched.
7. When searching the suspect's left side, the officer's left leg should be placed aligned with the middle of the suspect's back. With proper hand and foot location, the officer maintains complete control. With this approach, the officer searches with one hand.

B. Search the following

When searching a suspect incident to an arrest, search all of the following places:

1. Hair
2. Open mouth (have suspect open mouth; officer checks visually)
3. Collar
4. Back of neck, the ears, and behind the ears
5. Both arms
6. Armpits
7. Chest
8. Back
9. Waistline (feel inside the pants)
10. Inside belt
11. Crotch
12. Down both legs
13. Cuffs
14. Socks
15. Inside shoes

